

## DISTRICT OF NEVADA

Case No.: 3:18-cv-00283-RCJ-WGC

## Order

Re: ECF No. 3

## Defendants

1-1.) He subsequently filed a motion for appointment of guardian ad litem. (ECF No. 3.)

filing medical grievances.

undertaken a preliminary review of Plaintiff's complaint. It is likely that the complaint will be

1 dismissed with leave to amend. In light of Plaintiff's filing of a motion for appointment of a  
2 guardian ad litem, the court will defer screening at this time.

3       In his motion for appointment of a guardian ad litem, drafted by inmate preparer Roger  
4 Hull, Plaintiff states that he commenced this action on June 14, 2018, and since that time his  
5 health has deteriorated. Specifically, he states that he is unable to write due to neurological  
6 damage affecting his eyesight, concentration, and motor skills. In addition, he is currently in a  
7 wheel chair. On September 28, 2018, he was diagnosed with a lesion in his brain and plans were  
8 being made to remove it. He was advised by medical staff he may not survive the surgery and  
9 there was no guarantee the surgery would be successful. Plaintiff is in a segregated unit without  
10 access to another inmate to assist him, and he does not have the ability to confer with the law  
11 library inmate who drafted this motion on a regular basis.

12       Under Federal Rule of Civil Procedure 17(c), a "court must appoint a guardian ad litem-  
13 or issue another appropriate order-to protect a minor or incompetent person who is unrepresented  
14 in an action." The preliminary step in addressing a motion for appointment of guardian ad litem  
15 is to have a hearing to determine whether there is a "substantial question" regarding the movant's  
16 mental competence. *See Harris v. Mangum*, 863 F.3d 1133, 1138 (9th Cir. 2017) (citing *Allen v.*  
17 *Calderon*, 408 F.3d 1150, 1153 (9th Cir. 2005)). If there is a substantial question as to  
18 competency, the court will proceed with a competency hearing. *Id.* If the movant is determined  
19 incompetent a guardian ad litem is required, or the court can fashion some other order to protect  
20 the litigant's interests (i.e., appointment of counsel). *See Davis v. Walker*, 745 F.3d 1303, 1310  
21 (9th Cir. 2014).

22       In light of Plaintiff's claims that he has been diagnosed with a brain lesion that has  
23 affected his ability to write, as well as his eyesight, concentration and motor skills, and because

1 the court has not been informed whether Plaintiff has undergone surgery for the brain lesion and  
2 his current condition, the court will set a hearing to determine whether there is a substantial  
3 question regarding Plaintiff's mental competence.

4 In advance of the hearing, Plaintiff may file any documentation that he contends supports  
5 his claim of incompetence or inability to represent himself in this litigation.

6 The Attorney General's Office is ordered to enter a limited notice of appearance for the  
7 purpose of addressing Plaintiff's current mental competence and medical condition at the  
8 hearing. The Attorney General's Office is also ordered to file under seal any medical or mental  
9 health records pertinent to Plaintiff's current competence level and medical status.

#### 10 **CONCLUSION**

11 A decision on the application to proceed in forma pauperis and screening of the  
12 complaint (ECF Nos. 1, 1-1) are **DEFERRED**.

13 The court will enter a separate order setting the telephonic hearing addressing whether  
14 there is a substantial question regarding Plaintiff's mental competence. Plaintiff may file any  
15 documentation he has to support his claim of incompetence or inability to litigate this matter  
16 representing himself **AT LEAST THREE DAYS BEFORE THE HEARING**.

17 The Clerk must electronically **SERVE** a copy of this Order on the Office of the Attorney  
18 General of the State of Nevada, by adding the Attorney General of the State of Nevada to the  
19 docket sheet. This does not indicate acceptance of service.

20 Within **TEN DAYS** of the date of this Order, the Attorney General's Office must enter a  
21 limited notice of appearance for the purpose of appearing for a telephonic hearing addressing  
22 whether there is a substantial question as to Plaintiff's competency and ability to proceed pro se  
23

1 with this litigation. No defenses or objections, including lack of service, will be waived as a  
2 result of the filing of the limited notice of appearance.

3 **AT LEAST THREE DAYS BEFORE THE HEARING**, the Attorney General's Office  
4 must file under seal any mental health records, medical or other records that are relevant to  
5 Plaintiff's mental health, competence or current medical status.

6 **IT IS SO ORDERED.**

7 Dated: April 11, 2019

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William G. Cobb  
United States Magistrate Judge